



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/159217

PRELIMINARY RECITALS

Pursuant to a petition filed July 23, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 18, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied Petitioner's request for Replacement FoodShare benefits.

NOTE: The record was held open to give the parties an opportunity to supplement the record. [REDACTED] e-mailed a copy of a negative notice sent to Petitioner's mother and a copy of a WE energies bill dated July 25, 2014. The packet has been marked as Exhibit 3 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jose Silvestre, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner receives FoodShare benefits. His mother does not. (Testimony of Petitioner and his mother; Testimony of [REDACTED]; Exhibit 2, pg. 5)
3. The Petitioner kept his food at his mother's residence, because he is homeless. (Testimony of Petitioner)
4. His mother's home experienced a power outage in early July 2014. (Testimony of Petitioner)
5. Seven days after the power outage, Petitioner and his mother went to the Marcia P. Coggs Human Services Building to apply for replacement FoodShare benefits. (Testimony of Petitioner and his mother)
6. Petitioner's mother completed the application for replacement benefits, using her name, because the utility bill was in her name. (Testimony of Petitioner and his mother)
7. On July 15, 2014, the agency issued a notice to Petitioner's mother denying the benefits. (Exhibit 3)
8. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 23, 2014.

DISCUSSION

When a household experiences a misfortune that causes food to be destroyed, a state agency may issue Replacement FoodShare benefits. However, the food that was destroyed must have been purchased with FoodShare benefits. *FoodShare Wisconsin Handbook (FSH) §7.1.1.5*

Further, the amount of the Replacement Benefit is limited to the actual amount of food destroyed, but not more than the monthly allotment actually issued to the household, whichever is less. *FSH §7.1.1.5*

In order to receive replacement benefits a household must:

- 1) Report the loss orally or in writing to the agency within 10 days of the date the loss occurred.
- 2) Complete a "Request for Replacement FoodShare Benefits" (F-00330) within 10 days of the date the household report the loss.

Id .

The agency is required to verify the loss through a government agency, collateral contact, home visit, etc. *FSH §7.1.1.5* The agency must then issue the replacement benefits within 10 days, unless the claim appears to be fraudulent. *FSH §7.1.1.5*

In the case at hand, the Petitioner went to the agency to report the loss and completed the Request for FoodShare benefits, but misunderstood the process and completed the application under his mother's name.

It is found that the Petitioner timely reported his loss and timely submitted the F-00330, as required, though the form was not completed correctly. Accordingly, it is found that the agency should issue replacement benefits to the Petitioner.

The Petitioner requests that he receive the full allotment amount of \$189.00. However, the Petitioner concedes that not all of the food he purchased with his benefits was perishable. The Petitioner did not provide documentation of what food was actually lost, nor its value. The agency did not submit his EBT card usage, so one can only make a best estimate.

Accordingly, it is found that replacement benefits in the amount of \$95.00 is reasonable and appropriate, subject to verification from WE energies of the power outage.

CONCLUSIONS OF LAW

The agency incorrectly denied Petitioner's request for replacement FoodShare benefits.

THEREFORE, it is

ORDERED

That the agency contact WE energies to verify the power outage reported in Petitioner's mother's neighborhood. Upon verification, the agency shall issue to the Petitioner, replacement benefits in the amount of \$95.00. The agency shall take all administrative steps necessary to complete these tasks within 10-days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of September, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 15, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability